Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re: Delete, Delete, Delete	(	GN Docket No. 25-133

R.E.A.C.H. COMMENTS ON THE FCC'S DELETE, DELETE, DELETE EFFORT

Responsible Enterprises Against Consumer Harassment ("R.E.A.C.H.") appreciates the opportunity to respond to the FCC's Delete, Delete, Delete effort.[1]

I. About R.E.A.C.H.[2]

R.E.A.C.H. – a Mutual Benefit Corporation – was formed to advance the interests of direct-to-consumer marketers by i) establishing guidelines, best practices and protections for such companies in order to prevent fraudulent lead sales and reduce the industry-wide damage caused by unwanted robocalls; ii) working to increase contact rates and lower carrier resistance to direct to consumer marketing traffic; and iii) providing education regarding, and advocacy to limit, unfair litigation and media attention targeting such marketing companies.

II. The TCPA Is A Simple Statute But The FCC's Regulations Have Made It Needlessly Complex, Broad, And Difficult To Comply With.

The Telephone Consumer Protection Act ("TCPA") has led to a huge number of often frivolous class action filings against businesses small and large alike. It is the biggest cash cow in the history of the Plaintiff's bar—with more multi-millionaire Plaintiff's attorneys being made

[1] Public Notice, In re: Delete, Delete, Delete, DA 25-219, GN Docket No. 25-133 (Mar. 12, 2025) (seeking comments on how to promote the deregulatory initiatives outlined in President Trump's executive orders and providing a comment deadline of April 11, 2025, and a reply deadline of April 28, 2025).

[2] *See Our Mission*, R.E.A.C.H., https://www.reachmbc.com/mission (last visited Apr. 11, 2025).

under the TCPA than under any other federal statute.[3] And while the TCPA was originally drafted to allow small claims suits brought by ordinary consumers to collect for violations of the individual privacy concerns protected by the statute,[4] the vast majority of TCPA suits today are filed as class actions.[5]

These suits threaten to bankrupt even large companies and often serve as life-or-death extortion schemes against small to mid-sized companies that have no choice but to settle rather than incur massive penalties and attorneys' fees in defending the suit.

While the statute itself is written in clear and simple terms, the FCC's numerous regulations have made the statute incredibly difficult to apply. These needless and potentially illegal regulations should be deleted.[6]

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[3] Eric J. Troutman, *REPUBLISHED: Why the Supreme Court's Review of the TCPA is Likely to End the Biggest (And Weirdest) Class Action Cash Cow of All Time In the Name of Freedom*, TCPAWORLD (Feb. 11, 2020), https://tcpaworld.com/2020/02/11/republished-why-the-supreme-courts-review-of-the-tcpa-is-likely-to-end-the-biggest-and-weirdest-class-action-cash-cow-of-all-time-in-the-name-of-freedom/ ("With millions (or even billions) in potential exposure arising out of pedestrian and unavoidable so-called crimes … the TCPA quickly became the plaintiffs bar's golden goose. Indeed, as far as we can tell, the TCPA is the single largest producer of multimillion-dollar settlements (and therefore the single largest producer of millionaire plaintiffs lawyers) in history.").

[4] *Telephone Consumer Protection Act of 1991: Hearing Before the S. Comm. on S. Com., Sci. & Transp.*, 2016 WL 2895053, at *6-7 (May 18, 2016) (statement of Becca Wahlquist, Partner, Snell & Wilmer LLP) ("On the Senate floor, the TCPA's lead sponsor, Senator Hollings (D-SC), explained that the TCPA was intended to 'make it easier for consumers to recover damages' from computerized telemarketing calls, and that the intent was for consumers to go into small claims courts in their home states so that the $500 in damages would be available without an attorney[.]").

[5] Eric J. Troutman, *TCPA CLASS ACTION FILINGS EXPLODE: The MASSIVE Final Numbers Are In for 2024—And January, 2025 Numbers Are INSANE*, TCPAWORLD (Mar. 6, 2025), https://tcpaworld.com/2025/03/06/tcpa-class-action-filings-explode-the-massive-final-numbers-are-in-for-2024-and-january-2025-numbers-are-insane/; *WebRecon Dec 2024 Stats*, WEBRECON LLC, https://webrecon.com/webrecon-dec-2024-stats/ (last visited Apr. 11, 2025); *WebRecon Jan 2025 Stats*, WEBRECON LLC, https://webrecon.com/webrecon-jan-2025-stats/ (last visited Apr. 11, 2025).

[6] *Ins. Mktg. Coal. Ltd. v. FCC*, 127 F.4th 303, 317 (11th Cir. 2025) ("The FCC has impermissibly exceeding its statutory authority by attempting to redefine 'prior express consent' to including the additional restrictions. And exceeding statutory authority is a serious defect. Vacatur is therefore

A. All Rules And Regulations Expanding 47 U.S.C. § 227(b)(1)(A) Beyond Its Statutory Framework Should Be Deleted.

As written, 47 U.S.C. § 227(b)(1)(A) regulates only calls made using a random-fire autodialer or those "made" with a prerecorded or artificial voice message to certain categories of phones, including cellular phones.[7] Despite this simple language, the FCC has expanded the scope of the statute in many ways. Each should be "deleted."

First, although the statute requires a call to actually be "made"—*i.e.*, completed—using an ATDS or prerecorded or artificial voice, the FCC's CFR implementing the section has expanded the phrase to include calls that are merely "initiated" using such technology.[8] The FCC has also issued guidance broadly interpreting the phrase "initiate" to include pre-calling activity.[9] The result

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appropriate.") (citing *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1082-83 (D.C. Cir. 2017) (vacating FCC order because it exceeded statutory authority)).

[7] This statute makes it "unlawful" for any person "to make any call … using any automatic telephone dialing system or an artificial or prerecorded voice" to the following categories of phones:

> (i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);
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> (ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or
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> (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States.

47 U.S.C. § 227(b)(1)(A)(i)-(iii).

[8] *Compare id.* at § 227 (b)(1)(A) ("It shall be unlawful for any person … *to make* any call … using any automatic telephone dialing system or an artificial or prerecorded voice") (emphasis added), *with* 47 C.F.R. § 64.1200(a)(1) ("No person or entity may[] …, *initiate* any telephone call … using an automatic telephone dialing system or an artificial or prerecorded voice") (emphasis added).

[9] *In re Dish Network, LLC for Declaratory Ruling Concerning the TCPA Rules*, 28 FCC Rcd. 6574, 6583 (2013) ("We conclude that a person or entity 'initiates' a telephone call when it takes the steps necessary to physically place a call . . . . And one can imagine a circumstance in which a seller is so involving the placing of a specific telephone call as to be directly liable for initiating

is that the FCC has made the mere act of *attempting* a call that was not even completed a violation of the TCPA. This is absurd and Sections 64.1200(a)(1), (a)(2), (a)(3), (c), (d), and (f)(12) of Part 47 of the Code of Federal Regulations should be deleted.

Second, the Ninth Circuit Court of Appeals and Second Circuit Court of Appeals have confirmed that the TCPA's ATDS definition applies only to dialers that randomly create telephone numbers.[10] The Commission should clarify and should delete any regulation or ruling suggesting otherwise—including the declaration of the Omnibus rule.[11]

Third, although the statute specifically references "calls," the Commission has expanded the reach of Section 227(b) to apply to text messages. This is absurd, as text messages did not exist at the time the TCPA was passed.[12] As a result, Congress could not have intended the TCPA to

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it—by giving the third party specific and comprehensive instructions as to timing and the manner of the call, for example."); *In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7980-81 (2015) ("Thus, we look to the totality of the facts and circumstances surrounding the placing of a particular call to determine: 1) who took the steps necessary to physically place the call; and 2) whether another person or entity was so involved in placing the call as to be deemed to have initiated it …. [T]hese and other factors, such as the extent to which a person willfully enables fraudulent spoofing of telephone numbers or assists telemarketers in blocking Caller ID, by offering either functionality to clients, can be relevant in determining liability for TCPA violations. Similarly, whether a person who offers a calling platform service for the use of others has knowingly allowed its client(s) to use that platform for unlawful purposes may also be a factor in determining whether the platform provider is so involved in placing the calls as to be deemed to have initiated them.").

[10] *See Borden v. eFinancial, LLC*, 54 F.4th 1230, 1234 (9th Cir. 2022) ("In sum, the text and context of the statute make clear that an autodialer must be able to generate and dial random or sequential number phone numbers, not just any number."); *Soliman v. Subway Franchisee Advert. Fund Trust, Ltd.*, 101 F.4th 176, 185 (2d Cir. 2024) (holding that the TCPA's ATDS definition *only* applies to systems that randomly generate telephone numbers).

[11] *In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act. of 1991*, *supra* note 8, at 7980-81; *In re Dish Network, LLC for Declaratory Ruling Concerning the TCPA Rules*, *supra* note 8, at 6583.

[12] *Compare* Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (originally enacted on December 20, 1991), *with First SMS Text Message Is Sent*, HISTORY (Oct. 4, 2022), https://www.history.com/this-day-in-history/December-3/first-sms-text-message-sent ("On December 3, 1992, the first SMS text message in history is sent[.]").

apply to such technology. All rules and regulations expanding the TCPA to text messages should be deleted.

B. All Rules And Regulations Expanding The Scope Of 47 U.S.C. § 227(b)(2) And Limiting The Commercial Purposes Exemption Should Be Deleted.

As written, 47 U.S.C. § 227(b)(1)(A) regulates only calls "initiate[d]" to a "residential telephone line" with a prerecorded or artificial voice message to "deliver a message."[13] The statute allows the FCC to limit such calls where the calls do not invade privacy.[14]

The FCC had previously found that calls to consumers for non-marketing purposes do not invade consumer privacy.[15] It changed that finding following the enactment of the TRACED Act[16] and imposed a three-call per month limitation for non-consented commercial calls to residential lines.[17]

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[13] 47 U.S.C. § 227(b)(1)(B).

[14] *Id.* at §§ 227(b)(2)(B), (C).

[15] *In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991*, 7 FCC Rcd. 8752, 8768-74 (1992) (explaining that the TCPA "permits the Commission to exempt from the residential prohibition calls which are non-commercial and commercial calls which do not adversely affect the privacy rights of the called party and which do not transmit an unsolicited advertisement" and creating exemptions); *see also* 47 C.F.R. § 64.1200(a)(3) (providing that a call using an artificial or prerecorded voice requires no consent if the call "(i) is made for emergency purposes; (ii) is not made for a commercial purpose …; (iii) is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing …; (iv) is made by or on behalf of a tax-exempt nonprofit organization …; or (v) delivers a 'health care' message[.]")

[16] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence ("TRACED") Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019).

[17] *In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991 ACA Int'l Petition for Partial Reconsideration*, 37 FCC Rcd. 15472, 15479 (2022) ("We continue to believe that—with respect to the exemptions for non-commercial calls, commercial calls that do not constitute telemarketing, and calls by tax-exempt nonprofit organizations—limiting the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive thirty-day period strikes the appropriate balance between these callers reaching consumers with valuable information and reducing the number of unexpected and unwanted calls consumers currently receive[.]"); *see also* 47 C.F.R. § 64.1200(a)(3) (imposing the three call per month limitation).

The Commission was correct the first time. The rules and regulations adopted limiting the number of messages that may be left pursuant to the commercial purposes exemption should be deleted.

C. The Rules And Regulations Expanding The Scope Of The Definition Of Prerecorded And Artificial Voice Calls Should Be Deleted.

The TCPA governs calls "made"—when to a cellular phone—or "initiated"—when to a landline—using an artificial or prerecorded voice. The TCPA does not define these terms. Nonetheless, the FCC has expanded the reach of the TCPA to technologies that either did not exist or to use cases that are plainly not contemplated by the statute.

First, technologies like soundboard, avatar and generative AI voice have all been swept into the definition of "prerecorded or artificial voice" calling by FCC enactment.[18] Yet none of these technologies existed at the time the TCPA was passed in 1991. So there is no basis for the TCC to expand the reach of the statute to these new technologies without Congressional approval. All rules and regulations expanding the scope of the TCPA to avatar, soundboard, and generative AI voices must therefore be deleted.

Second, Section 227(b)(1) plainly applies only to live calls "made" with a prerecorded or artificial voice and not to voicemails that are merely left following a live call attempt. This is clear from the distinction between Section 227(b)(1) and Section 227(b)(2), which references calls initiated to "deliver a message." As such, any rule or regulation expanding the scope of prerecorded

[18] *In re Implications of A.I. Techs. on Protecting Consumers from Unwanted Robocalls & Robotexts*, FCC 24-17, CG Docket No. 23-362, 2024 WL 519167, at *2 (2024) ("[W]e confirm that the TCPA's restrictions on the use of 'artificial or prerecorded voice' encompass current AI technologies that resemble human voices and/or generate call content using a prerecorded voice.").

or artificial voice "calls" to include voicemails—or ringless voicemails—lefts on a cellular phone exceeds the scope of the TCPA and must be deleted.

Third, the Commission has required prerecorded and artificial voice calls to include certain content. While these content requirements are authorized by the TCPA, the fact such content requirements exist are at odds with rules and regulations suggesting any use of a prerecorded or artificial voice at the outset of a call—such as those informing a consumer "this call may be recorded." As such the Commission should delete any rule or regulation suggesting live calls merely initiated using a prerecorded voice qualify as prerecorded calls when made to a cellular phone under 227(b)(1).

Fourth, the Commission's rules require a caller to leave a prerecorded message in the event of an abandoned call.[19] This requirement lacks any support in the TCPA. It also needlessly converts live calls into calls subject to 227(b) limitations—a trap for unwary small businesses. This regulation must be deleted.

D. All Rules And Regulations Imposing Caller ID Requirements Should Be Deleted.

The FCC has imposed Caller ID requirements upon callers—particularly those who are engaged in telemarketing.[20] Yet, the wireless carriers control what the labeling of calls encountered

[19] 47 C.F.R. § 64.1200(a)(7)(i) ("No person or entity may[] … Abandon more than three percent of all telemarketing calls that are answered live by a person …. A call is 'abandoned' if it is not connected to a live representative within two (2) seconds of the called person's completed greeting. Whenever a live sales representative is not available to speak with the person answering the call, within two (2) seconds after the called person's completed greeting, the telemarketer or the seller must" leave a complaint voicemail).

[20] 47 C.F.R. § 64.1601(e) ("Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(1) must transmit caller identification information."); *see generally* Public Notice, Wireline Competition Bureau Issues Caller ID Authentication Best Practices, DA 20-1526, WC Docket Nos. 17-97, 20-324, 35 FCC Rcd. 14726 (2020).

by consumers looks like.[21] Since the Caller ID requirements impose an obligation on small businesses to control something they cannot control—or at least cannot control without paying for expensive labeling products that weigh down their operation[22]—the Caller ID requirements should be deleted.

E. All Rules And Regulations Permitting Or Empowering Default Call Blocking Or Call Labelling Should Be Deleted.

R.E.A.C.H. has submitted a detailed petition setting forth the abuses by wireless carriers in blocking and labeling consented and lawful calls and text messages.[23]

The Commission should take action on that petition and delete all safe harbor provisions affording the wireless carries the ability to block or label calls. The delegated authority of the FCC to the wireless carriers to censor speech flies directly in the face of the Communications Act provisions barring such blocking and plainly violated the First Amendment. This is especially true, as the wireless carriers' actions constitute "state action" in this context and speech licensing is being undertaken without any authority delegated by Congress. All rules and regulations authorizing default call or SMS blocking must be deleted.

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[21] *See*, *e.g.*, Code of Conduct for the AT&T Short Code and 10-Digit A2P SMS Messages, AT&T (June 1, 2020), https://www.10dlc.org/att_code_of_conduct_062020.pdf; Code of Conduct, T-Mobile (Nov. 2020), https://www.t-mobile.com/support/public-files/attachments/TMobile_Code_of_Conduct_1113.2022.pdf; Carrier Code of Conduct, 10DLC, https://www.10dlc.org/en/verizon-tmobile-att-sprint-carrier-code-of-conduct (last visited Apr. 11, 2025).

[22] Reply Comments of Numeracle, In re Targeting & Eliminating Unlawful Text Messages, Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, CG Docket Nos. 21-402, 02-278, 17-59 (Mar. 12, 2024).

[23] R.E.A.C.H. Petition to Revise Safe Harbor Rules Relating to Call & Text Blocking, In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, Advanced Methods to Target & Eliminate Unlawful Robocalls, Targeting & Eliminating Unlawful Text Messages, CG Docket Nos. 02-278, 17-59, 21-402 (Jan. 29, 2025).

F. All Rules And Regulations Limiting Prior Express Consent Or Prior Express Invitation Or Permission Should Be Deleted.

The Eleventh Circuit Court of Appeals recently clarified the Commission cannot implement the TCPA in a manner that restricts a consumer's right to receive calls.[24] Yet the FCC's regulations do this in numerous respects.

First, the Commission has imposed a requirement that both prior express written consent and prior express invitation or permission be in writing.[25] The TCPA does not so require.[26] Imposing such a limitation is entirely at odds with the language of the TCPA and limits a consumer's right to consent, so 47 C.F.R. §§ 64.1200(a)(2), (a)(3), (a)(7)(ii), (a)(10), (c)(2)(ii), and (f)(9) must be deleted.

Second, even if the requirement of a written disclosure is maintained, the content requirements of 47 C.F.R. § 64.1200(f)(9) are excessive. Especially the requirement that consent cannot be a condition of a good or service is entirely divorced from any statutory requirement and needlessly impedes the ability of private parties to contract. As such, the provisions of Section 64.1200(f)(9) should be deleted, either entirely, or to the extent necessary to bring the regulation into alignment with the underlying law of contract.

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[24] *See Ins. Mktg. Coal., supra* note 5.

[25] 47 C.F.R. §§ 64.1200(a)(2), (3) (exempting from liability "a call made with the prior express written consent of the called party"); *id.* at § 64.1200(c)(2)(ii) (providing that the maker of telephone solicitations will not face liability if "it has obtained the subscriber's prior express invitation or permission[,]" which "must be evidenced by a signed, written agreement between the consumer and seller which states the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed[.]"); *id.* at § 64.1200(f)(9) ("The term prior express written consent means an agreement, in writing, that bears the signature of the person called or texted that clearly and conspicuously authorizes no more than one identified seller to deliver or cause to be delivered to the person called or texted advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice.").

[26] *See* 47 U.S.C. §§ 227(b)(1)(A), (1)(B), (2)(A) (requiring "prior express consent").

G. All Rules And Regulations Expanding "Revocation" Rights To Conflict With Common Sense And Contractual Terms Should Be Deleted.

The TCPA does not grant any right to a consumer to revoke consent. The common law does permit such revocation, however, but only where revocation is clearly stated. The FCC has expanded the scope of revocation in a manner that threatens consented, reasonable and expected communications from legitimate American businesses.

First, the Commission recently passed a rule greatly expanding the scope of revocation rights afforded by the common law.[27] This ruling is antithetical to common sense and deprives consumers of critical messages, as numerous other commentators have noted.[28] It also imposes a needless burden on the free speech rights of Americans and businesses hoping to reach consumers. While the Commission has delayed the effective date of a portion of the rule, the entire rule should be deleted, and the Commission should simply confirm the application of common law revocation principles to the TCPA's consent provisions.[29]

Second, the Commission's rule requires prerecorded marketing calls to include automated keypunch opt-outs, even when such calls are consented. There is no reason to impose this

[27] Strengthening the Ability of Consumers to Stop Robocalls, 89 Fed. Reg. 82518 (Oct. 11, 2024) (to be codified at 47 C.F.R. pt. 64); Report & Order & Further Notice of Proposed Rulemaking, In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, FCC 24-24, CF Docket No. 02-278, 2024 WL 668031 (Feb. 16, 2024) (adopting rules to "1) make clearer that revocation of consent can be made in any reasonable manner; 2) require that callers honor do-not-call and consent revocation requests within a reasonable time not to exceed 10 business days of receipt; 3) limit text senders to a one-time text message confirming a consumer's request that no further text messages be sent, as well as confirming that any revocation of consent applies to those robocalls and robotexts for which consent is required under the TCPA.").

[28] Comments of ACA Int'l, In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278 (Apr. 4, 2024); Comments of NCTA – The Internet & Television Assoc., In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278 (Apr. 4, 2024).

[29] Order, In re Rules & Reguls. Implementing the Tel. Consumer Prot. Act of 1991, DA 25-312, CG Docket No. 02-278 (Apr. 7, 2025) (delaying the effective date of revocation rule found at section 64.1200(a)(10)).

requirement on consented calls—especially as the keypunch mechanism must be described within two seconds of the disclosure of the name of the caller, a requirement that greatly reduces the consumer experience and effectiveness of the message. All rules or regulations requiring the use of a keypunch optout on prerecorded messages should be deleted.[30]

H. All Rules And Regulations Expanding The "Persons" Subject To The TCPA Should Be Deleted.

The TCPA specifically defines the "persons" that are subject to the statute.[31] The FCC has expanded the reach of the TCPA beyond its plain language to apply to non-persons such as state and local governments. Such an expansion of the statute beyond the TCPA's language flies in the face of the written limitations of the Act. As such all rules or regulations expanding the TCPA to apply to government entities must be deleted.

III. Conclusion

R.E.A.C.H. appreciates the Commission's continued attention to this matter and respectfully submits that the FCC's extensive regulations have rendered a straightforward statute unnecessarily complex. Accordingly, these regulations should be deleted.

Respectfully submitted, By: */s/ Eric J. Troutman*

Eric J. Troutman
R.E.A.C.H. President

April 11, 2025

[30] 47 C.F.R. § 64.1200(b)(3) (requiring "an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request").

[31] 47 U.S.C. § 153(39) ("The term 'person' includes an individual, partnership, association, joint-stock company, trust, or corporation.").